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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,760	02/09/2001	Valentin Hierzer	CC-3052	6608

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EXAMINER

HYLTON, ROBIN ANNENETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/780,760	HIERZER, VALENTIN	
	Examiner Robin Hylton	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 November 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 7-26 is/are rejected.
- 7) Claim(s) 5, 6, 27 and 28 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 February 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 06 November 2002 is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Drawings*

1. The corrected or substitute drawings were received on November 6, 2002. These drawings are approved by the examiner
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the orifice having a substantially elliptical configuration must be shown or the feature canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 15-17, 19, and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by DeGroot et al. (US 2002/0104855).

See figure 18 for the structure and paragraph 0050 regarding the snap action hinge.

### *Claim Rejections - 35 USC § 103*

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 1-4,15,16,18-23,25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nycz (US 4,801,054) in view of Odet et al. (US 4,795,043).

Nycz teaches a closure **10** having a screw-threaded body **16** and a hinged cap **18**, the body having a spout **32** extending upwardly from a deck **34** and positioned off-center (see figures 2-5), and an annular sealing lip extending downwardly from the deck for engaging the uppermost surface of a container finish (see figure 2). Nycz does not teach the spout is elongated nor a sealing liner for covering a container mouth.

Odet teaches a closure having a screw threaded body **21** having an elongated spout **29** positioned off-center on the deck **26** and a cap **22** hinged to the body and a sealing liner **9** for covering the container mouth.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a sealing liner to the container neck and to change the shape of the spout of Nycz to an elongate shape in view of the teaching of Odet. Doing so assures the ultimate user of the integrity of the container contents while an elongated spout aids in spreading the dispensed material from the associated container.

Regarding claim 18, Nycz does not teach an annular recess formed at the periphery of the deck while Odet does. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an annular recess at the periphery of the deck to form an additional seal between the closure body and the closure lid. The overhanging portion of the lid does not preclude such an engagement (see fig. 2).

Regarding claims 19 and 20, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the orifice of a substantially elliptical shape or of a shape having parallel sides with curved ends therebetween since such a modification

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would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Bietzer et al. (US 5,887,738).

Nycz teaches the claimed closure except for the annular seal including a projection including an angular tip formed thereon.

Bietzer teaches a hinged closure having an annular seal including an angular tip providing pressure on the seal, thus, deforming the seal at the area of contact.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an projection including an angular tip on the annular seal to the modified closure of Nycz as taught by Bietzer. Doing so provides a more reliable seal and allows for some flexure of the seal membrane when internal pressure increases in the container.

8. Claims 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Dubach (US 5,094,361).

Nycz as modified teaches the claimed closure except for sealing beads on the spout cover and the spout.

Dubach teaches it is known to provide cooperating beads on a spout and a spout cover.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a spout bead and a spout cover bead to the modified closure of Nycz. Doing so ensures a more secure engagement between the spout and the spout cover and eliminates accidental separation of the two structures.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Dubach (US 4,854,473).

Nycz as modified teaches the claimed closure except for the hinge being a snap hinge (see col. 3, lines 18-21 for types suggested).

Dubach teaches it is known to provide a closure with a snap hinge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a snap hinge to the closure of Nycz. Doing so provides a hinging engagement that maintains the lid in a fully open or fully closed position.

10. Claims 8-14, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeGroot.

The embodiment of figure 18 is silent regarding cooperating sealing beads on the spout and spout cover. However, DeGroot teaches an embodiment providing a sealing bead on an interior of the spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of cooperating sealing beads on the spout and spout cover of the embodiment in figure 18, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

Regarding claim 20, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the orifice of a substantially elliptical shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

#### ***Allowable Subject Matter***

11. Claims 5, 6, 17 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. Applicant's arguments filed November 6, 2002 have been fully considered but they are not persuasive.

Regarding applicant's comments at page 2, paragraph 4, wherein an elongated orifice may be inherently "more difficult" to seal than a circular spout, it is not impossible to seal an elongated spout (as evidenced by the instant application).

Regarding applicant's comments at page 3, paragraph 2, the two seals serve to ensure a water-tight seal desired by Nycz. It is well known in the closure art that two seals or sealing flanges of any configuration serve to insure a leak-proof or water-tight seal.

Regarding the seal of Odet, the rejection does not change the structure of the Odet closure. The teaching of Odet, as set forth in the rejection, is for the shape of the off-center orifice. The teaching reference (Odet) is not being modified, but rather is used to modify the structure of Nycz.

13. Applicant's arguments with respect to claims 19 and 24 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

14. This Office action is made non-final.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures having foil seals and sealing fins are cited for their disclosures.

16. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO

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deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

17. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_  
Signature\_\_\_\_\_

Date \_\_\_\_\_

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
January 25, 2003

  
Robin A. Hylton  
Patent Examiner  
GAU 3727